Editor's note: See also United States v. Catherine R. Blythe, 16 IBLA 94 (June 28, 1974)

CATHERINE R. BLYTHE

IBLA 75-403 July 31, 1975

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting NM-9867, an application to purchase a tract of land within an unpatented mining claim pursuant to the Mining Claims Occupancy Act.

Affirmed.

1. Mining Occupancy Act: Generally

   The Mining Claims Occupancy Act was intended to provide relief for persons who used their mining claims as "a principal place of residence" and for whom a hardship would be visited if they were required to move from their long-established homes on invalid mining claims.

2. Mining Occupancy Act: Generally -- Mining Occupancy Act: Principal Place of Residence

   An applicant under the Mining Claims Occupancy Act of October 23, 1962, has the burden of satisfactorily showing that she and any predecessors in interest occupied valuable improvements on a mining claim as a principal place of residence for the 7-year period immediately preceding July 23, 1962. A mere conclusive statement that she has so used the tract is not sufficient. Where specific factual assertions demonstrate only intermittent use, an application is properly rejected.

APPEARANCES: Catherine R. Blythe, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On June 9, 1969, appellant filed application NM-9867 to purchase five acres of her Cougar Lode Mining Claim pursuant to the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 et seq. (1970). At that time, mining contest No. NM-244, involving appellant's mining claim, was on appeal. Subsequent to this Board's decision in United States v. Catherine R. Blythe, 16 IBLA 94 (1974), affirming the invalidation of the Cougar Lode Mining Claim, the New Mexico State Office, Bureau of Land Management, rejected appellant's application NM-9867. Appellant then timely filed this appeal from that decision.

The claim, situated in the Lincoln National Forest, was originally located in 1948 by Eddie Fitzpatrick and Dee C. Blythe, appellant's husband. Fitzpatrick and his wife conveyed their undivided one-half interest in the unpatented claim to Buck Ellison and his wife, who in turn quitclaimed this interest to appellant and her husband by a deed dated May 20, 1960.

The State Office decision determined that appellant was not a qualified applicant because the mining claim was not a "principal place of residence" for her and her predecessors in interest during the seven years prior to July 23, 1962, as required by 30 U.S.C. § 702 (1970). Appellant disputes this finding, arguing that improper criteria were used, that information supplied by her was ignored, and that it is based in part on present conditions. 1/

Appellant's occupancy of the land was set forth in her Statement of Reasons for Appeal quoting her application:

> 9. For her "statement of equities," applicant says: That she has in good faith occupied said mining claim for more than 20 years and during said period has done a great deal of the annual assessment work herself, including mucking out the adit which is the principal

1/ Appellant also argues that the State Office interpreted 30 U.S.C. § 702 (1970) to mean that the mining claim must have been her only principal place of residence in order to qualify. Although the decision of the State Office refers at one point to "her principal place of residence" (emphasis added), the final determination clearly states that the mining claim was not used as "a principal place of residence" (emphasis added). Moreover, as will be shown infra, we find that when the proper statutory interpretation is applied, appellant does not qualify under the Act.

development on the claim; that for her the claim truly has been "a principal place of residence" [w]ithin the meaning of the Act for more than 20 years; that she has resided thereon for periods up to three months at a time, including six weeks in January and February 1969; that there has never been a year during the last 15 years, and particularly during the critical period from July 23, 1955, to date, that she has not spent several weeks on this claim, usually alone except for her dogs; that during the year 1962, when the Act became effective, she spent more time than usual on the claim because she had become ill and exhausted caring for her aged mother during the latter's terminal illness; that on several occasions in winter she has been snowbound in the cabin for weeks at a time; that she has never committed any act of waste on the premises and has in fact endeavore[d] to prevent erosion, improve forest trails, and help keep up forest fences; that applicant and her husband in good faith paid Buck Ellison and Mable Ellison $500 for their half interest in the claim in 1960; that the cabin is isolated, on a dead end road, and will not interfere with recreational and forestry uses; and that the tract contains no commercial timber.

The State Office, basing its decision upon the Forest Service Report, found as follows:

1. Catherine R. Blythe (Mrs. Dee C. Blythe) has a residence in Clovis, New Mexico, and has been registered to vote in Curry County, New Mexico, since July 18, 1939. The Cougar lode mining claim is not her principal place of residence.

2. Catherine R. Blythe and her husband, Dee C. Blythe, have owned and paid taxes on a home in Clovis, New Mexico, since 1939.

3. Catherine R. Blythe and her husband have never paid any taxes on the improvements on the Cougar lode mining claim.

4. Catherine R. Blythe's occupancy of this claim is no different than the intermittent occupancy of vacationers who can spend only a limited time on mining claims.

> 5. The improvements and site have been, and are now, used only intermittently for such purposes as weekend occupancy or for vacations of short duration by Catherine R. Blythe.

We do not find merit in appellant's objections to these findings and must therefore reject her appeal.

[1] The Mining Claims Occupancy Act (the Act), supra, was intended to provide relief for persons who used their mining claims as "a principal place of residence" and "for whom a hardship would be visited if they were required to move from their long-established homes on invalid mining claims." Dorothy L. Gordon, 18 IBLA 67, 69 (1974); Jack A. Walker, A-30492 (April 28, 1966), aff'd, United States v. Walker, 408 F.2d 477 (9th Cir. 1969).

A regulation promulgated under the Act defines the term "a principal place of residence" as meaning:

> * * * an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent residential use, such as for a hunting cabin or for weekend occupancy.

43 CFR 2550.0-5(d).

In explaining the type of uses excepted from consideration, this Department in referring to the quoted regulation has stated:

> The regulation does not purport to list all of the nonqualifying purposes for which a mining claim site may be used. The specific uses excluded from consideration by the regulation are merely illustrative of the types of use which do not establish a structure as a principal place of residence. The substance of the provision is that intermittent or sporadic use or occupancy for any purpose while concurrent residence is maintained at a regular place of residence or domicile, as distinguished from occupancy for at least a substantial part of each year to the exclusion of maintenance of regular residence elsewhere during the same period, is not qualifying under the act. * * *

Henry P. Smith, 74 I.D. 378, 384 (1967).

[2] An applicant under the Act has the burden of satisfactorily showing that the statutory and regulatory requirements have

been met, particularly, that she and any predecessors in interest occupied valuable improvements on a mining claim as a principal place of residence during the entire 7-year period prior to July 23, 1962. Dorothy M. Long, 8 IBLA 4, 8 (1972); Henry P. Smith, supra at 385.

We have reviewed the showing submitted by appellant which consists solely of statements signed by her and her husband. They make a conclusive statement that the land was used as a principal place of residence during the time period in question, but offer little in the way of specific facts to support that conclusion. We cannot accept a mere conclusion as a satisfactory showing under the Act, especially where more particular statements tend to establish that the use was the type of casual and intermittent use proscribed by the regulation. The quotation from appellant's statement sets forth most of the specific facts given by her. At most this statement shows she spent several weeks on the claim, usually alone, during the critical period from July 23, 1955, to date, but spent more time in 1962. Reading her statement as favorably as can be, she indicates that she resided on the claim for "periods up to three months at a time, including six weeks in January and February 1969." However, we do not know what year, or years, her stay may have been for three months. Time spent on the claim in 1969 is, of course, not relevant to an application under the Act.

During the 7-year period in question prior to July 23, 1962, appellant admits she maintained a residence in Clovis, New Mexico, some 160 miles away from the claim. There is nothing to show that during a substantial part of the year the claim site was her residence instead of the Clovis home which was used the remainder of the year. The mere use for a week or weeks at a time is not sufficient alone to establish that the claim was a principal place of residence. Funderberg v. Udall, 396 F.2d 638 (9th Cir. 1968); Henry P. Smith, supra; see Dorothy L. Gordon, supra; Cora Pruett, A-30524 (April 28, 1966). Appellant states that she intends to retire to the claim in the next few years. Her intent to live on the claim in the future cannot substitute for a failure to show use of the claim as a principal place of residence during the essential years. Henry P. Smith, supra at 385; Cora Pruett, supra. A cogent factor demonstrating that the claim was not a principal place of residence of appellant is that she did not have a mailing address in Nogal, New Mexico, the nearest post office to the claim. This is shown by the Forest Service field report.

In short, appellant has not shown facts which would corroborate her conclusion that the claim was a principal place of residence

for her during the essential 7-year period. 2/ At most, all that she has shown is a mere intermittent use by herself. This does not satisfy the statutory and regulatory requirements. Therefore, her application was properly rejected.

Appellant's objection to the consideration by the State Office of her payment of taxes on the Clovis home and not on the improvements on the claim is unfounded. Consideration of these facts constitutes an attempt by the State Office to discover sufficient factors to qualify appellant despite her concurrent residence in Clovis and her intermittent residence on the claim. Further, we can find nothing in appellant's description of her occupancy which was ignored by the State Office or which would qualify her under the Act. Finally, a passing reference in the State Office decision to current intermittent residence by appellant on the mining claim does not in any way militate against the ultimate conclusion in that decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ Corroborating proof such as statements by those who may have known her at the site during the time period in question, more specific information of dates when she was on the claim, and other information which would tend to give more credence to her statement of residency, would be essential for the applicant to meet her burden. We note that prior to May 1960 a one-half interest in the claim was owned by others. There is no information regarding possible use by such persons or whether appellant's use was the exclusive use of the improvements on the claim. Use by another family during the time appellant asserts the claim was a principal place of residence by her would tend to militate against that assertion.